IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 203 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTABEN CHANDULAL SHAH

Versus

GAJIBEN WD/O UMEDJI ABHRAJJI

Appearance:

1. Appeal from Order No. 203 of 2004

MR.S.B. VAKIL, SENIOR COUNSEL WITH MR AS VAKIL for Appellant No.

..... for Respondent No. 1-6

MR SHALIN N MEHTA for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 27/08/2004

ORAL JUDGEMENT

The matter was listed from time to time and it was kept for final disposal on admission board at the request of the learned advocates as both the learned

advocates are of the opinion that merely admitting the matter may not serve the ends of justice.

2. ADMIT. Mr.Shalin N. Mehta, the learned advocate for respondents no.6 and 7 waives service of process of admission. In view of the fact that respondents no.6 and 7 are the really contesting parties service of notice of admission to other respondents is waived.

3. The facts of the case are: the appellant-original plaintiff claims that she has purchased the land in question by a registered sale deed on 25.07.2002. As against that the claim of defendant no.7, Gayatrikrupa Sarkari Karmachari Cooperative Housing Society Limited (hereinafter referred to as "the society") is that, the society has purchased the same land by a registered sale deed dated 16.07.1999, which is executed in its favour by defendant no.6, who claims to be the 'Power of Attorney holder' of defendants no.1 to 4. It is important to note that defendant no.6 has not produced that 'Power of Attorney' before the trial court. The case of defendant no.6 is that, defendants no.1 to 4 had executed Power of Attorney in favour of defendant no.6 on 01.10.1991; that on the very day a registered Banakhat for the land in question was also executed by defendants no.1 to 4, in favour of defendant no.6. It is significant that this document is also not produced before the trial court. It is claimed that, defendant no.6, the Power of Attorney holder has executed sale deed in favour of defendant no.7 on 16.07.1999 as referred to hereinabove. Thereafter, defendant no.6-the Power of Attorney Holder took upon himself the burden of making all possible applications before various authorities on behalf of defendant no.7. Mr.Mehta, the learned advocate for defendants no.6 and 7 made available relevant documents by way of Paper Book which included two orders made on the applications made by defendant no.6 on behalf of defendant no.7. One of these orders is passed by the District Collector, dated 24.07.1999. This order is on an application dated 20.03.1999. It is addressed to defendant no.6, describing him as Power of Attorney holder in the body of the order, an application made on behalf of defendant no.7 seeking permission to sell is referred to. A schedule is annexed to the order which contains the number of as many as 36 lands. For all these 36 lands permission is sought for, by defendant no.6, as Power of Attorney holder of all the land owners. The nature of the activity in which defendant no.6 is involved can be inferred from the aforesaid fact. The application was made on 29.03.1999 seeking permission to sell, and the permission was granted subject to

conditions, which are provided under section 63 of the Tenancy Act and Rule 36. Besides certain other conditions are added in this order, of which condition no.1 is that, 'the registered sale deed should be got executed within six months from the date of this order', whereas the sale deed was already got executed on 16.07.1999, i.e. prior to grant of permission. Mr.Mehta, the learned a advocate for respondents no.6 and 7 explained this condition by saying that, the document, if any, already executed, should be got registered within six months from the date of this order. There cannot be a better example of misreading of the order. The application was seeking permission under section 63 and Rule 36 of the Tenancy Act. Such permission is a condition precedent for sale of land. Therefore, prima facie, the sale deed dated 16.07.1999 which is prior in point of time to permission dated 24.07.1999 is illegal.

4. Be that as it may, the question is as to whether the learned Judge is right in passing the order by comparing the two documents only, namely, document dated 25.07.2002 and 16.07.1999 and drawing a conclusion, on the basis of these two documents only, as to who is in possession. In the considered opinion of this Court the learned Judge has erred in doing so. Only because the document executed in favour of defendant no.7 by defendant no.6, the Power of Attorney Holder, whose 'Power of Attorney' is not on record, is prior in point of time cannot be held to be in possession. The document in favour of the plaintiff dated 25.07.2002, later in point of time cannot be the basis for holding that he is not in possession. If only the date of execution of a document is the sole criterion for determining the physical possession of the land then it is possible that an unscrupulous person may get a document executed and on the basis of that document claims possession of the property and can get relief from the Court.

5. The case of the plaintiff is that the predecessor in title of the plaintiff, one Hansaben, daughter of Shakraji Dahyaji, who had purchased this land from one Galaji on 06.01.1976, on the basis of which at one stage revenue entries no.5281 and 6215 were made which were subsequently cancelled, because the sale was alleged to be in breach of 'Prevention of Fragmentation Act'. Thereafter, appeals were filed before the Revenue authorities. Order cancelling those entries was quashed. Be that as it may, as for the present the Court is not examining the issue. But then the fact remains that factum of registered sale deed dated 06.01.1976 cannot be denied. In this sale deed also it is stated that

possession of land was handed over to Shakraji. Mr.Shalin N. Mehta, the learned advocate for respondents no.6 & 7 vehemently contended that sale deed dated 06.01.1976 is not a valid document inasmuch as Galaji had no right, title to sell the entire land. This contention is misplaced so far as defendants no.6 and 7 are concerned. Whether said Shri Galaji had right, title to sell the land or not can be questioned by defendants no.1 to 4 only, who have not chosen to come before the Court taking any such objection. This contention is raised only to protect an illegal act of executing sale deed by defendant no.6 in favour of defendant no.7 which cannot be entertained hence rejected.

6. The other order is dated 07.07.1999, this order is passed by the Deputy Collector, granting permission in reference to the Gujarat Disturbed Areas Transfer Act and the Government Notifications of the Revenue Department as some of the lands of the Schedule annexed to the order (consisting of 33 lands) were situated within disturbed areas. This order is also of no help to defendants no.6 and 7, to establish that defendant no.7 is in possession of the land in question. Merely because the sale deed in their favour is executed on 16.07.1999, which is a registered sale deed, does not ipso facto establish that defendant no.7 is in possession of the land, which otherwise is stated to be in possession of Shakraji Dahyaji under another registered sale deed dated 06.01.1976. There is nothing on record to show that said Shri Shakraji was ever dispossessed after the land was sold to him and possession was handed over to him.

7. In view of that this Appeal From Order is allowed. The order passed by the learned Judge dated 27.04.2004 rejecting Exhibit 5 application is hereby quashed and set aside and the relief as prayed for in Exhibit 5 application is granted. At this juncture Mr.Mehta requested to clarify that the observations made hereinabove are, prima facie, and that the same should not influence the learned Judge while deciding the suit. Request is granted. The learned Judge shall decided the matter strictly on merits without being influenced by any observations made hereinbelow.

8. Taking into consideration the nature of the dispute involved in the matter and the fact that defendant no.7 is a cooperative society, it is deemed fit to direct the learned Judge to give priority to the hearing of the suit and decide the same as early as possible, preferably by 30.04.2005. Order accordingly.

(Ravi R. Tripathi, J.)
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